

ASSEMBLY BILL

No. 416

Introduced by Assembly Member Block

February 23, 2009

An act to add Section 4640.4 to the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

AB 416, as introduced, Block. Developmental services: consumer abuse registry.

Existing law, the Lanterman Developmental Disabilities Services Act, grants persons with developmental disabilities the right to receive treatment and services to meet their needs, regardless of age or degree of handicap, at each stage of life. Existing law requires that the state pay for these services through contracts with various private nonprofit corporations for the operation of regional centers for the developmentally disabled, and requires regional centers to develop an individual program plan (IPP) for each consumer that sets forth the treatment and services to be provided for the consumer.

This bill would require a provider, as defined, to report a substantiated case of abuse of a consumer by a direct service worker to the appropriate investigating agencies, as defined. The bill would also require investigating agencies to report abuse of a consumer by a direct service worker to the State Department of Developmental Services. The bill would require the department to establish a registry of direct service workers or others against whom one or more substantiated reports of abuse of a consumer have been reported, and to make the registry available, pursuant to a release protocol established by the department in consultation with program stakeholders, to specified persons. The

bill would require providers to access the registry before hiring a direct service worker and would prohibit providers from hiring or contracting with a direct service worker who is included in the registry. The bill would also require the department to coordinate with the State Department of Public Health and the State Department of Social Services to share information about direct service workers, and would require the department to adopt regulations to implement the bill's provisions by July 1, 2010.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4640.4 is added to the Welfare and
2 Institutions Code, to read:
3 4640.4. (a) Every provider shall report any evidence of abuse
4 of a consumer by a direct service worker to the appropriate
5 investigating agencies.
6 (b) Investigating agencies shall report substantiated cases of
7 abuse of a consumer to the department.
8 (c) The department shall establish a registry of direct service
9 workers or other persons against whom one or more substantiated
10 reports of abuse of a consumer have been reported. The registry
11 shall not contain confidential consumer information. The
12 department shall adopt a protocol that will provide procedures for
13 all of the following:
14 (1) The addition of a person to the registry based on a
15 substantiated report submitted by an investigating agency.
16 (2) The notification of, and the timely appeal by, a person added
17 to the registry. The procedure shall include the addition of a person
18 to a pending appeal category for no longer than a specified period
19 of time.
20 (3) The enabling of a person listed on the registry to petition
21 for immediate removal from the registry.
22 (4) Authorization for the following individuals or agencies to
23 contact the department to determine whether an employee or
24 contractor, or a prospective employee or contractor, is included in
25 the registry:
26 (A) Representatives of regional centers.

1 (B) Providers of services to persons with developmental
2 disabilities.

3 (C) State and local law enforcement agencies.

4 (D) District attorneys.

5 (E) Representatives of county child protective services and adult
6 protective services agencies.

7 (F) The office of the Attorney General.

8 (G) The state long-term care ombudsperson.

9 (H) Consumers seeking to hire direct service workers.

10 (I) The family of a person with developmental disabilities.

11 (J) Licensing agencies.

12 (K) The State Department of Social Services.

13 (L) The California Department of Aging.

14 (M) The State Department of Mental Health.

15 (5) Update the registry content on a regular basis.

16 (d) In developing the protocols required under subdivision (c),
17 the department shall consult with program stakeholders, including,
18 but not limited to, representatives from regional centers, providers
19 of services to persons with developmental disabilities, state and
20 local law enforcement agencies, district attorneys, representatives
21 of county child protective services and adult protective services
22 agencies, the office of the Attorney General, the state long-term
23 care ombudsperson, the state's designated protection and advocacy
24 agency described in subdivision (i) of Section 4900, other
25 advocates for persons with disabilities, the REACH Coalition,
26 consumers, families of persons with developmental disabilities,
27 licensing agencies, the State Department of Developmental
28 Services, the State Department of Social Services, the California
29 Department of Aging, the State Department of Mental Health, and
30 civil rights organizations.

31 (e) Notwithstanding any provision of law to the contrary, neither
32 the department nor any person or entity who relies on the registry,
33 shall incur any liability for their participation in developing the
34 registry or for using or relying on information contained in the
35 registry.

36 (f) Before a provider hires or contracts with a direct service
37 worker, the provider shall access the registry to determine whether
38 the direct service worker is included in the registry. A provider
39 shall not hire or contract for services with a person included in the

1 registry. This subdivision shall not apply to consumers and families
2 hiring caregivers.

3 (g) The department shall adopt regulations to implement this
4 section by July 1, 2010. These regulations shall include penalties
5 for the hiring by providers of persons on the registry in violation
6 of the prohibition contained in subdivision (f).

7 (h) The department shall coordinate with the State Department
8 of Public Health and the State Department of Social Services to
9 share information about direct service workers, or other persons
10 providing services to consumers, against whom one or more reports
11 of abuse of a consumer have been substantiated for inclusion in
12 the registry in accordance with the protocols developed pursuant
13 to subdivision (c).

14 (i) This section shall not be interpreted to alter or amend any
15 existing child, elder, or dependent adult abuse or neglect reporting
16 requirement, including, but not limited to, Section 1418.91 of the
17 Health and Safety Code, Article 2.5 (commencing with Section
18 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or
19 Article 3 (commencing with Section 15630) of Chapter 11 of Part
20 3 of Division 9.

21 (j) For the purposes of this section, the following definitions
22 shall apply:

23 (1) "Abuse" means an act or failure to act that would constitute
24 abuse as defined by Section 15610.07 or Sections 11165.2 and
25 11165.6 of the Penal Code.

26 (2) "Direct service worker" means a person who provides direct
27 care for a person with a developmental disability.

28 (3) "Investigating agency" means any agency with a statutory
29 responsibility to report incidents of abuse or neglect, including,
30 but not limited to, adult protective services, child protective
31 services, community care licensing, the State Department of Health
32 Care Services, the State Department of Public Health, and the State
33 Department of Developmental Services.

34 (4) "Provider" means both licensed and unlicensed individuals
35 or agencies that provide residential or nonresidential services to
36 people with developmental disabilities, including, but not limited
37 to, all of the following:

38 (A) Day program services, including activity centers, adult
39 developmental centers, adult day care, behavior management

1 services, camping services, independent living services, infant
2 development services, and social recreation services.

3 (B) Transportation services.

4 (C) Work activity and supported employment services.

5 (D) Counseling and therapy services.

6 (E) Medical and dental services.

7 (F) Case management services and professional conservatorship
8 and guardianship services.

9 (G) Attendant or personal assistance services.

10 (H) Residential services, including community care facilities,
11 long-term care facilities, developmental centers, and supported
12 living services.

13 (5) “Substantiated report” means a report of abuse, as defined
14 in paragraph (1), that is provided by an investigating agency where
15 that agency has determined that it is more likely than not that abuse
16 occurred.